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No. 90-1874

In the Supreme Court of the United States

OCTOBER TERM, 1990

IN RE: ARTHUR COURNOYER,
PETITIONER.

OPPOSITION OF RESPONDENT TOWN OF LINCOLN TO PETITION FOR AN EXTRAORDINARY WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND

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QUESTION PRESENTED

Should This Court Accept This Matter For Review And Issue An Extraordinary Common Law Writ Of Certiorari Where:

1. The Matter Complained Of Concerns A Ministerial Order Of An Inferior State Court After Remand From A State Court Of Last Resort;
2. The Petitioner Currently Has Pending An Appeal Before The Supreme Court Of The State Of Rhode Island Concerning Said Further Court Order Which Has Not To Date, Been Finally Resolved;
3. The Constitutional Issues Which Petitioner Seeks To Raise Herein Concern An Order Issued By The Superior Court On February 22, 1990 Which Order Was Appealed By The Petitioner To The Rhode Island Supreme Court And Which Appeal Was Dismissed By That Court Resolving All Present Issues By Decision Dated November 16, 1990;
4. The Petitioner Is Accordingly In Violation Of Rule 13.1 Of The Rules Of The Supreme Court In That He Has Filed This Petition More Than Ninety (90) Days After The Entry Of Final Judgment On The Issues Raised;
5. Where The Petitioner Incorrectly And Insufficiently States The Facts And Travel Of This Case Which Spans Thirty-Three (33) Years Of Contumacious Behavior On The Part Of The Petitioner; And Where
6. The Superior Court's Order Was Constitutionally Correct?

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JURISDICTION

The respondent denies that jurisdiction is properly invoked by the petitioner pursuant to 28 U.S.C. 1651(a) in that said writ is not "agreeable to the usages and principles of law" and is not "in aid" of this Courts' jurisdiction. Furthermore jurisdiction is improperly invoked in that the petitioner is guilty of laches, unclean hands and insofar as the petitioner has violated the threshold time limitations of Rule 13.1 of the Rules of the Supreme Court.

RESPONDENT'S STATEMENT OF FACTS

The following facts were before the Rhode Island Superior Court, Mr. Justice Anthony Giannini presiding, when the Respondent was found in contempt:

1. Arthur Cournoyer's property is located in residential and agricultural zones in the Town of Lincoln, Rhode Island.

2. Commercial uses are not permitted in residential zones under the Lincoln Code of Ordinances.

3. House trailers are not permitted in residential zones unless located in a duly licensed trailer park.

4. On February 18, 1958 the Superior Court of the State of Rhode Island found in the action below (Equity No. 26210) "that the use to which said real estate is being put ... is a public nuisance". The Court accordingly in 1958 ordered Arthur Cournoyer to remove from the subject real estate all "*trucks, trailers* ... [etc.]". (See Exhibit 1, Para. #2).

5. The Superior Court, by *agreement* of the parties, ordered Cournoyer "permanently enjoined from violating the provisions of the Zoning Ordinances of the Town of Lincoln". (See Exhibit 1, Para. #3).

6. The initial determination prohibiting Cournoyer's use of the premises for truck storage, or junk and salvage purposes has been cited or upheld by the Supreme Court of the State of Rhode Island on numerous occasions. See, *Cournoyer* v. *ZBR of Lincoln*, 92 R.I. 42, 166 A.2d 128 (1960); *Town of Lincoln* v. *Cournoyer*, 95 R.I. 20, 186 A.2d 728 (1962); *Town of Lincoln* v. *Cournoyer*, 102 R.I. 512, 232 A.2d 124 (1967); *Cournoyer* v. *Sharkey*, 107 R.I. 373, 267 A.2d 722 (1970); *Town of Lincoln* v. *Cournoyer*, 290 A.2d 600 (1976); *Town of Lincoln* v. *Cournoyer*, 375 A.2d 410 (R.I. 1977). ("Arthur's intransigency has caused him to have more than his day in court. It has enabled him to make a lifetime career out of deliberately flouting judicial mandates, thereby causing an expenditure of judicial effort and time that could have been put to much better use elsewhere". *Id.* at p. 413) *Town of Lincoln* v. *Cournoyer*, ____ A.2d ____ (R.I. Appeal #90-145A) summarily dismissed November 16, 1990.

7. After the February 18, 1958 Consent Judgment, due to Cournoyer's non-compliance, the Town was forced to seek an Order finding Cournoyer in contempt on May 1, 1958. (See Court docket attached as Exhibit 2).

8. The Court docket reveals that Cournoyer was found in contempt on July 6, 1959.

9. On November 10, 1959 the Court again found Cournoyer in contempt. Cournoyer was incarcerated and released by Order on December 6, 1959.

10. A decree was entered on December 15, 1959.

11. On May 15, 1961 the Town was again forced to seek an Order of Contempt and a decree entered accordingly.

12. Cournoyer was again found in contempt on June 30, 1961.

13. On February 3, 1969, Cournoyer was again found in contempt.

14. On April 30, 1969 Cournoyer was committed to the Adult Correctional Institution (hereinafter "the ACI") for contempt for the second time.

15. A Special Master was appointed on January 4, 1971 for the purpose of supervising the Court ordered clean up. (Hundreds of vehicles were removed).

16. Not having cleaned his property, an Order authorizing clean up and sale of goods was entered on June 20, 1974.

17. Cournoyer tracked more junked vehicles onto his property and the Town again sought an Order for contempt on April 24, 1975; a Special Master was again appointed on June 9, 1975.

18. The Town again sought contempt Orders and Orders were issued on:

(A) May 19, 1976
(B) June 18, 1976
(C) April 4, 1977

19. On July 9, 1980 the Court again found Cournoyer in contempt and he was sentenced to the ACI for the third time.

20. More junk was brought onto the property and on November 13, 1981 an additional clean-up order was entered.

21. On November 15, 1982 another clean-up order was entered.

22. Mr. Cournoyer claimed bankruptcy on or about June 25, 1982 *purportedly* due to an inability to pay the lawyers' bills of previous attorneys.

23. Again on March 30, 1983 an order to clear Cournoyer's land was entered.

24. In 1983, in an attempt to argue that his junk was of eleemosynary quality (and accordingly permitted under local zoning), the "Truck Museum of Rhode Island" was "created".

25. Mr. Cournoyer used the Bankruptcy Court to argue that the Superior Court mandates ordering the clean-up of his junkyard were automatically discharged by the Bankruptcy. This argument was denied by the Bankruptcy Court in a Decision dated October 13, 1984, upholding the efficacy of the Superior Court clean-up orders. *In re Cournoyer*, 43 B.R. 354 (Bkrtcy R.I. 1984). The Bankruptcy Decision was affirmed by the Federal District Court on September 12, 1985. In that case Mr. Justice Pettine noted "given the tortuously long history of this case . . . and the seemingly endless series of legal maneuvers employed by Appellant Cournoyer and his counsel to avert the inevitable day of reckoning, I cannot now remand this case for future proceedings. Appellant has had more opportunities than he deserves to take appropriate action and dating to 1958, he has not done so." Judge Pettine's decision was affirmed by the United States Court of Appeals for the First Circuit on May 9, 1986. *Cournoyer* v. *Town of Lincoln*, 790 F.2d 971 (1st Cir. 1986). In 1990, Cournoyer paid his creditors and the "Bankruptcy" action was dismissed.

26. After creation of the truck "museum", on May 30, 1983, Cournoyer sought, In Bankruptcy, "to abandon" 111 (one hundred and eleven) vehicles on his property which he referred to in a filed memorandum as "skeletons" which were and not even worth "scrap value".

27. The Bankruptcy Court allowed the abandonment of the rusting junks based upon his representations.

28. Mr. Cournoyer promptly "deeded" the junked "skeletons" to the "Truck Museum" where they were promptly canonized as "museum exhibits".

29. Cournoyer and the Truck Museum next sued the Town in Federal Court claiming that the Truck Museum was a valid entity and that the Town had, in following the clean-up orders, improperly removed Truck Museum "exhibits" and other property (mostly junked vehicles and a trailer) from the land. That action, C.A. 86-0676P, was dismissed with prejudice in February of 1988.

30. Federal District Court Judge Raymond Pettine separately ordered Cournoyer and the Truck Museum to clean the premises on May 15, 1986.

31. The Federal Court found Cournoyer in contempt of that order on October 15, 1986 and ordered the Town to remove and sell all violating vehicles.

32. The Town was forced to clean the premises in 1986 when hundreds of junked trucks and vehicles were removed and again in 1987 pursuant to Judge Pettine's instruction, due to Mr. Cournoyer's continued intransigence.

33. The Superior Court again confirmed Cournoyer's lack of compliance by Orders dated August 5, 1987 and November 2, 1987.

34. On February 26, 1988 the Town was again forced to seek a finding of contempt in the Superior Court as Cournoyer continued to conduct commercial junk and salvage operations on the property.

35. The "Truck Museum of Rhode Island" was added as a party defendant to this case out of an abundance of caution in March of 1988 and Joseph Little was appointed as Special Master in May of 1988.

36. After extensive trial, in November of 1988, the "Truck Museum" agreed to clear the premises of "exhibits" which it allegedly owned. The "Truck Museum" is no longer a denizen of Lincoln or anywhere else to our knowledge.

37. On July 26, 1989 and again on January 24, 1990 the Town was forced to seek contempt against Mr. Cournoyer for continued violations following the November 1988 cleanup.

38. On February 21, 1990 the Superior Court found Cournoyer in contempt. This finding was based largely upon the extensive evidence adduced during the November 1988 trial and thereafter.

39. On February 22, 1990 Cournoyer was sentenced to the ACI for the fourth time. The six (6) month sentence was suspended on condition that he clean his property by April 30, 1990. That Order also commanded Cournoyer to remove the subject garage and trailer. (Decree dated March 1, 1990).

40. Cournoyer appealed that Order to the Supreme Court (Appeal #90-145A) on March 8, 1990, broadly raising constitutional arguments against the removal Orders.

41. By May 7, 1990 Cournoyer had not, despite his assurances, cleared his property as ordered and, after hearing, Cournoyer was again sent up to the ACI for a fourth time after the Court vacated the suspension of his sentence.

42. On June 14, 1990 the Defendant was released by consent upon his promise that the premises would be cleared by July 25, 1990. (See Exhibit 3 Consent Order dated June 14, 1990).

43. Again Cournoyer failed to do as promised and he was re-incarcerated, after hearing, thereafter. (Fifth incarceration).

44. On November 16, 1990 the Rhode Island Supreme Court, after briefing and oral argument, dismissed Cournoyer's Appeal specifically finding that the Superior Court had authority to order the removal of the trailer, vehicles and garage. (See Exhibit 4).

45. Well after serving the remainder of his sentence the matter was convened again on February 15, 1991 for a "status hearing".

46. On February 20, 1991 the Court entered an order finding Cournoyer still in contempt and reiterating the ordered

removal of the trailer, garage, vehicles and junk. Cournoyer was given another six (6) month suspended sentence and was afforded the opportunity to clear his land by March 8, 1991.

47. On March 8, 1991 Cournoyer again had failed to remove all structures and vehicles as ordered. Again, after the status hearing, he was ordered to serve the six (6) month sentence imposed in February 1991 and the Special Master was directed to conduct the clean-up and sale. (Twenty-third contempt related Order) (Sixth Incarceration). Cournoyer was released by the Supreme Court on personal recognizance thereafter.

48. On March 19, 1991, Cournoyer again appealed the removal orders of March, 1991 to the Rhode Island Supreme Court wherein he raised basically the same issues previously decided by Appeal #90-145 four (4) months earlier. That appeal is now pending before the Rhode Island Supreme Court.

OBJECTION TO PETITIONER'S STATEMENT OF THE CASE

The petitioner's statement of the case is inaccurate and misleading. The Respondent alerts the Court to the following misstatements:

(1) The 1949 Zoning Ordinance of the Town of Lincoln did not place "Petitioner's land in a residential zone, after it had been used for many years in a commercial enterprise". That issue was long ago settled but has been re-argued by petitioner ad infinitum. The testimony of Henry Gagnon below reaffirmed this finding.

In 1960, Cournoyer petitioned the Zoning Board of Review for a variance in order to conduct the commercial use. He never argued therein that he had a pre-existing non-conforming use and his petition was denied. See *Cournoyer* v. *Zoning Board of Review of Town of Lincoln*, 166 A.2d 128 (R.I.

1960). Twenty years later at a second zoning hearing on application for a variance in 1981, Cournoyer first argued inconsistently, that his use was "grandfathered". Witnesses Henry Gagnon and Ronald Gagnon appeared and testified under oath on December 1, 1981 that Arthur Cournoyer did *not* commence his commercial use of the property until approximately 1953, at least four years *after* the adoption of the Lincoln Zoning Ordinance. Cournoyer's second petition for variance was denied by the Zoning Board by decision dated January 4, 1981. Cournoyer appealed the decision to the Rhode Island Superior Court where it was docketed as Civil Action #82-22. His appeal was ultimately denied. His "nonconforming use" argument was deemed barred by reason of *Res Judicata* in the decisions *Cournoyer* v. *Sharkey*, 267 A.2d 722 (R.I. 1970) and *Lincoln* v. *Cournoyer*, 375 A.2d 410 (R.I. 1977).

(2) Thirty-three (33) years ago in 1958, the petitioner entered into a "Consent Decree" admitting that his commercial use of the property was a "public nuisance" and was violative of existing zoning laws. (See Exhibit 1) The petitioner's argument that he never authorized the Consent Decree was raised by Mr. Cournoyer in 1977 during an earlier appeal taken in this case *Lincoln* v. *Cournoyer, et al*, 118 R.I. 644 (1977). The Court found that his contention was nineteen (19) years too late and was accordingly barred by the doctrine of res judicata. *Id.* at 649-50.

(3) All parties involved at the time of the 1958 decree are not "deceased" as claimed. Various witnesses including Cournoyer's next door neighbor, Henry Gagnon, (the prior owner of Cournoyer's property) as well as Gagnon's son, Ronald, have attested to his lack of a grandfathered commercial enterprise and are still alive. Also very much alive is Gerald Oster, the prior Town Solicitor who signed and attests to the validity of the 1958 consent decree.

(4) Cournoyer was not jailed merely for "failing to clear junked trucks . . . from his property" he was jailed for wilfully

violating Court orders by *inter alia* bringing junked automobiles onto his property repeatedly after the Court appointed Special Master had conducted mass removals.

(5) The property is not "cleared as of this day" as alleged. Commercial vehicles, a commercially used structure and a plumbing-and-septic-free mobile home still remain in violation of Town Zoning Ordinances and Court orders.

REASONS FOR DENYING THE REQUEST FOR ISSUANCE OF AN EXTRAORDINARY WRIT

The petitioner's brief appears to have been written without a complete knowledge of the facts and travel of this tremendously bizarre case. The thirty-three (33) year history of this account is summarized above. Mr. Cournoyer is best defined by Mr. Webster:

> *phoenix*/'fe-niks/n . . . a legendary bird which according to one account lived 500 years, burned itself to ashes on a pyre, and rose youthfully alive from the ashes to live another period. . . . *Webster's New Collegiate Dictionary* (5th Edition)

Legend and lore aside, the Cournoyer saga of tracking junked vehicles onto his property and using his land in defiance of Court orders and Town Zoning laws should now be ushered to eternal rest.

A. The Orders Are Not Those Of A Court Of "Last Resort"

This petition purportedly seeks review of two (2) orders. The first dated February 20, 1991 and the second dated March 11, 1991. Both were orders of the Superior Court of the State of Rhode Island. The Superior Court is *not* a "State Court of Last Resort" but is, instead, a "Lower State Court" by definition.

Rule 13.1 of the Rules of the Supreme Court of the United States reads as follows:

REVIEW ON CERTIORARI; TIME FOR PETITIONING

> .1. A petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a *state court of last resort*, a United States court of appeals, or the United States Court of Military Appeals shall be deemed in time when it is filed with the Clerk of this Court within *90 days after the entry of the judgment*. A petition for a writ of certiorari seeking review of a judgment of a lower state court which is subject to discretionary review by the state court of last resort shall be deemed in time when it is filed with the Clerk within 90 days after the entry of the order denying discretionary review. (Emphasis added).

The general rule as to reviewability of a writ is that a state court judgment must be subject to no further review or correction in any other tribunal. It must also be an effective determination of the litigation or "the final word of a final Court." *Market St. R. Co.* v. *Railroad Commission*, 324 U.S. 548, 551 (1945). *Supreme Court Practice*, Stearn, Robert L. (6th ed.) at p. 122.

The finality rule serves several ends by avoiding piecemeal review of state court opinions, by avoiding "advisory" opinions, and by leaving federal intrusion into state affairs at a minimum. See *Republic Natural Gas Co.* v. *Oklahoma*, 334 U.S. 62, 67-69 (1948).

Here, the orders of the Superior Court dated February 20, 1991 and March 11, 1991 are currently under appeal to the Supreme Court of the State of Rhode Island. (Appeal No. 91-132A). This petition is, at best, premature and this Court should accordingly refuse to review the matter by means of extraordinary writ.

B. The Petition For Writ Is Otherwise "Out Of Time"

Rule 13.3 of the Rules of the Supreme Court of the United States reads as follows:

> .3. The Clerk will refuse to receive any petition for a writ of certiorari which is jurisdictionally out of time.

Combined with Rule 13.1, Rule 13.3 jurisdictionally requires that the necessary petition be filed "90 days after the entry . . ." of a judgment ". . . entered by a state court of last resort. . . ."

The order of the Superior Court compelling removal of the commercial vehicles, commercial garage and illegal mobile home was issued on February 22, 1990. That order was appealed to the Rhode Island Supreme Court in Appeal #90-145. The petitioner raised similar arguments therein and his appeal was dismissed by Decision of the Rhode Island Supreme Court on November 16, 1990. (See Exhibit 4)

While the petitioner attempts to ignore the effect of that decision, the Town argues that *res judicata* now applies and that this petition for review is otherwise untimely pursuant to Rules 13.1 and 13.3.

The subject Superior Court orders dated February 20, 1991 and March 11, 1991 were generated after status hearings merely upon remand from the Supreme Court. A civil contempt judgment imposed for refusing to obey a court order is considered "final". See *New York Times Co.* v. *Jascalevich*, 439 U.S. 1317, 1319 n.3 (1978) (White J., in chambers). If nothing more than a ministerial act remains to be done on remand, a judgment is generally regarded as final. *Pope* v. *Atlantic Coast Line R. Co.*, 345 U.S. 379, 382 (1953).

Thus, where a state court of final resort renders a final decision disposing of federal issues and remands the case to the trial court for further proceedings, a trial court judge cannot

be reviewed by the Supreme Court if the judgment is appealable under state law. This is true even though the appellate court considers itself bound on the second appeal by its decision on the first appeal. In such cases, the second appeal, though a mere formality, is considered a prerequisite to Supreme Court review. *McComb* v. *Commissioners*, 91 U.S. 1 (1875); *Great Western Tel. Co.* v. *Burnham*, 162 U.S. 339 (1896).

On the other hand, if the remand to the trial court is for the ministerial purpose of entering a prescribed decree which is not subject to further review under state law, the judgment of the Appellate Court is considered to be the judgment of the highest court in which decision could be had, despite remand. See *Cole* v. *Violette*, 319 U.S. 581 (1943). See also, *Supreme Court Practice*, supra, at p. 140.

In this case, the status hearings after remand in 1991 were ministerial in nature. The final order concerning removal of the offending objects was entered by the Rhode Island Supreme Court on November 16, 1990 and the present petition for review is accordingly time-barred by the United States Supreme Court Rules. The petitioner's later attempts to clarify or amend the opinion in 1991 did not suspend the finality of the 1990 state court Judgment. See *Department of Banking* v. *Pink*, 317 U.S. 264, 266-7 (1942).

C. Review Is Improper As The Matter Is Res Judicata

If state law makes it improper to raise federal questions for the first time in a trial court after a case has been remanded to it by a state appellate court, such questions are considered as being raised too late and the Supreme Court will accordingly decline jurisdiction. See *Union Mutual Life Ins. Co.* v. *Kirchoff*, 169 U.S. 103 (1898), *Louisville & Nashville R. Co.* v. *Higdon*, 234 U.S. 592, 597-8 (1914). *Supreme Court Practice*, supra.

In Rhode Island, the doctrine of *Res Judicata* applies as an absolute bar to a cause of action where there exists:

1) identity of parties
2) identity of issues and
3) finality of judgment.

Airlite Products, Inc. v. *Gilbane Building Co.*, 115 R.I. 410, 422, 347 A.2d 623, 630 (1975); *DiSaia* v. *Capital Industries, Inc.*, 113 R.I. 292, 298, 320 A.2d 604 (1974); *Beirne* v. *Barone*, 529 A.2d 154, 156 (R.I. 1987).

When the doctrine is invoked it serves to render the prior judgment conclusive as to any issues that were raised or which *could have been raised* and litigated. *Zalobowski* v. *N.E. Teamsters*, 410 A.2d 436, 437 (R.I. 1980); *Armstrong* v. *Armstrong*, 362 A.2d 147, 149 (R.I. 1976); *Corrado* v. *Providence Redevelopment Agency*, 320 A.2d 331, 332 (R.I. 1974).

The principals of Res Judicata will operate to bar re-litigation of the same matters even when constitutional issues are presented. See *Hebert* v. *Ventetuolo*, 480 A.2d 403 (R.I. 1984).

It has long been acknowledged in Rhode Island that a finding of contempt is a "final" decree for the purposes of an appeal. *Jastram* v. *McAuslan*, 19 R.I. 390 (1909).

Cournoyer clearly questioned the authority of the Superior Court concerning the removal of the garage and trailer in his appeal one year ago. (Brief of Respondent/Appellee, Issues Presented, Appeal #90-0145).

While the constitutional arguments presented by the Petitioner in his 1991 appeal are certainly more lengthy, the Petitioner does not raise new issues. *Res Judicata* bars the present Rhode Island Supreme Court Appeal as the 1990 Supreme Court Decision was a final adjudication of all issues which were or may have been raised at that time.

The pending 1991 appeal is merely an attempt to re-litigate the Order entered in 1990. Further consideration of the issues

contained in this petition, and in the appeal now pending below, is accordingly inappropriate.

D. The Constitutional Arguments Are Otherwise Improperly Raised On Subsequent "Appeal" Of A Contempt Order Issued For Non-Compliance With A Prior Order.

An Order issued by a Court of competent jurisdiction must be obeyed until it is reversed by orderly and proper proceedings. This is true despite an attack on the constitutionality of the act under which the Order is issued. *United States* v. *United Mine Workers*, 330 U.S. 158 (1947).

The alleged invalidity of a Court Order is not generally considered a defense in a contempt proceedings alleging disobedience of the Order. *Walker* v. *Birmingham*, 338 U.S. 306 (1967); *United States* v. *Seale*, 461 F.2d 345 (7th Cir. 1972); *Pennsylvania* v. *I.U.O.E.*, 552 F.2d 498 *cert. den.* 434 U.S. 822 (3rd Cir. 1977).

One who believes that a Court Order is erroneous is not relieved of his duty to obey it. The proper course of action is to comply and cite the Order as reversible error. *Chapman* v. *Pacific Tel. and Tel. Co.*, 613 F.2d 193 (9th Cir. 1979).

Cournoyer (while not complying with clean-up) did appeal this action and cite the Order as reversible error below in Appeal 90-0145. The Superior Court, exercising restraint, did not order execution by the Special Master of its removal Orders during the pendency of the appeal. That appeal was decided against Cournoyer on November 16, 1990.

A contempt proceeding does not reopen to reconsideration the legal and factual basis of the Order alleged to have been disobeyed and thus become a retrial of the original controversy. The procedure to enforce the Court's Order commanding an act should not be rendered so inconclusive as to foster experimentation with disobedience. *United States* v. *Rylander*, 460 U.S. 752 (1983) Reh. Den. 462 U.S. 1113.

The Rhode Island Supreme Court has limited its review of sanctions imposed for civil contempt to a review of the Order to assure that the terms are reasonable. *Moran* v. *Rhode Island Brotherhood of Correctional Workers*, 506 A.2d 452 (R.I. 1986). In this case the Supreme Court has found the Superior Court's Removal Orders to have been reasonable and within the authority of the Superior Court. (See Exhibit 4)

The Rhode Island Supreme Court has acknowledged that it will not countenance collateral attacks upon an underlying Order when the argument is raised on review of a judgment of civil contempt stemming from disobedience of the Order. *North Providence School Committee* v. *North Providence Federation of Teachers, Local 920*, 468 A.2d 272 (R.I. 1983). Accordingly a party cannot raise in defense of his alleged misconduct that the court erred in entering the injunctive Order. *Boyls* v. *Boyls*, 473 A.2d 1307 (R.I. 1983).

Failure to brief or argue issues on review of a Contempt Order works a waiver of such issues under Rhode Island law. *Tente* v. *Tente*, 112 R.I. 636, 314 A.2d 149 (1974).

The present "constitutional" issues, even if considered as "new" for arguments sake, are not properly considered under Rhode Island Law in light of the Petitioner's continued non-compliance.

E. The Superior Court's Contempt Order Was Constitutionally Correct.

1) *The Court Has Broad Equity Power to Deal With Contempt*

The Respondent in this case has deliberately disregarded at least twenty-three (23) Court Orders, issued after at least twenty-three (23) Contempt Hearings over approximately thirty-three (33) years. He has been incarcerated approximately six (6) times to no apparent avail. He has litigated and relitigated these issues in at least five (5) different courts of competent trial and appellate jurisdiction.

He continues to violate the terms of the original 1958 Consent Decree and the zoning laws of the Town of Lincoln.

Civil contempt is aimed at preserving and enforcing the rights of parties, to compel obedience to Orders and Decrees and is meant to be coercive in nature. *Palmiggiano* v. *Garrahy*, 448 F.Supp. 659 (D.R.I. 1978). Sanctions for civil contempt should therefore be sufficiently coercive to gain swift compliance. *Marek* v. *Marek*, 383 A.2d 1031 (R.I. 1978).

The right of the courts to conduct their business in an untrammeled way lies at the foundation of the American system of government. Courts necessarily must possess adequate means for addressing contempt. *Woods* v. *Georgia*, 370 U.S. 375 (1962).

In the action below the Rhode Island Superior Court appropriately ordered Mr. Cournoyer to take steps which were calculated to bring him into compliance with the town's zoning ordinances. After thirty-three (33) years of "chances", the court took more conclusive steps to assure compliance.

2) *Cournoyer Has Been Afforded Due Process Under The 14th Amendment*

Rhode Island Courts recognize that due process is not a mechanical rule. It is, instead, one which must be decided by the facts of each case. *D'Agostino* v. *Doorly*, 375 A.2d 948 (R.I. 1977). As long as contempt sanctions for failure to comply with a judicial order are construed so as to compel obedience to an order, due process is deemed satisfied. *Melechinsky* v. *Laurie*, 382 A.2d 1316 (R.I. 1978); *Harrison* v. *Mason & Winograd, Inc.*, 397 A.2d 514 (R.I. 1979).

Rhode Island courts also recognize that due process requires that one charged with contempt be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have the opportunity to testify and to produce witnesses in his own behalf. *Mills* v. *Howard*, 280 A.2d 101 (R.I. 1971).

Cournoyer has been afforded notice and hearing on his contempt for various zoning and court order infractions at least twenty-three (23) times in the same case.

With regard to the latest finding of contempt, Cournoyer was given the clear opportunity to produce witnesses and to cross-examine the witnesses of the town at length, particularly during the week-long evidentiary hearing in November of 1988.

Cournoyer's complaint is that he did not forecast the scope and gravity of the court's order resulting from the contempt hearing. His myopia does not effect the validity of the order itself.

It is not a denial of due process for an appellate state court to dismiss the appeal of a party who, subsequent to his day in court at the trial level, willfully flouts the judicial process. *Hemenway* v. *Hemenway*, 339 A.2d 247 (R.I. 1975).

When viewed against the facts of this case, the substance and form of due process afforded during the course of this litigation was clearly sufficient to meet federal constitutional mandates.

3) *Cournoyer's Right To "Equal Protection" Under The 14th Amendment Has Not Been Abridged*

Cournoyer's contumacious track record ultimately prompted the Rhode Island Superior Court to exercise the full breadth of its equity powers in an effort to prevent another thirty-three (33) years of non-compliant behavior.

Zoning ordinances are proper tools of the local police power. When the terms of a zoning ordinance are rationally enforced to the alleged detriment of a property owner, equal protection notions are not necessarily abridged thereby. See generally, *Skelly* v. *Zoning Board of Review of South Kingstown*, 569 A.2d 1054 (R.I. 1990) and *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 9 (1974).

The court appropriately ordered Cournoyer to remove the violating trailer and to disassemble the garage which was found to be the base of his illegal commercial operation. The illegal commercial activity of Cournoyer, like a phoenix, has risen about twenty-three (23) times from its own ashes. Disassembly of the base of the commercial operation was accordingly an appropriate order under any constitutional standard.

Cournoyer's arguments, and his actions, disregard the basic tenet that individuals in a free and orderly society must abide by laws enacted for the common good. The order requiring Cournoyer's final compliance with the zoning ordinances of the Town is an action reasonably necessary under these very peculiar circumstances to protect the public welfare. The order of the Superior Court was a permissible exercise of both the police power and the equitable jurisdiction of the Court.

F. Review Pursuant To 28 U.S.C. Section 1651 Is Otherwise Improper

The petitioner herein seeks relief based in equity and common law. Various equitable principles militate against review in this case.

Discretionary writs will not be granted in aid of those who come to the court with unclean hands. *United States Ex. Rel. Turner* v. *Fisher*, 222 U.S. 204 (1911). Similarly, "laches" of the petitioner in making application prevents issuance of an extraordinary writ. *Re Eastern Cherokees*, 220 U.S. 83 (1911).

In this case, the Town asserts that Cournoyer's "grandfather rights" and "lack of authority" defenses were disposed of by means of the unappealed 1958 Consent Decree. See *Cournoyer* v. *Sharkey*, 107 R.I. 373 (1970) and *Town of Lincoln* v. *Cournoyer*, 118 R.I. 644, 649 (1977).

The "all writs act" 28 U.S.C., Section 1651, is meant to be used only in exceptional cases where there is clear abuse of discretion or usurpation of judicial power. *LeBuy* v. *Howes Leather Co.*, 352 U.S. 249 reh. den. 352 U.S. 1019 (1957).

Such writs are reserved for truly extraordinary causes and then only to confine an inferior court to the exercise of its prescribed jurisdiction. *Platt* v. *Minnesota Mining and Mfg. Co.*, 376 U.S. 240 (1964).

The all writs act was intended to "effectuate and prevent frustration of orders . . ." issued in the exercise of the court's jurisdiction. *United States* v. *New York Tel. Co.*, 434 U.S. 159 (1977). Here the petitioner seeks to do precisely the opposite by sustaining a thirty-three (33) year history of contempt. On numerous occasions over the past four (4) decades Cournoyer failed to avail himself of the remedies available pursuant to 28 U.S.C. Section 1257.

Review should accordingly be denied.

CONCLUSION

The power of the United States Supreme Court to issue extraordinary writs can be constitutionally exercised only insofar as such writs are in aid of its appellate jurisdiction. The issuance of writs in such cases will usually be refused unless a question of public importance is involved. *Ex Parte Republic of Peru*, 318 U.S. 578 (1943); *United States Alkali Export Assoc.* v. *United States*, 325 U.S. 196 (1945).

On September 17, 1796, George Washington, (no doubt haunted by premonitions of Arthur Cournoyer) offered the following words in his farewell address:

> The very idea of the power and right of the people to establish government presupposes the duty of every individual to obey the established government. . . . Liberty itself will find in such government with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where government is too feeble to . . . confine each member of society within the limits prescribed by the laws and to maintain *all* in the secure and tranquil enjoyment of the rights of person and

> property. *Washington's Farewell Address*, Richardson, ed. *Messages and Papers of George Washington*, Vol. 1 pg. 213.

Washington's words are no less appropriate now than they were one hundred and ninety-five (195) years ago when he struggled to unite disparate, headstrong colonials. Compare his words with those of Superior Court Judge Giannini in this case:

> Now, Mr. Cournoyer may consider himself headstrong. Mr. Cournoyer may be intransigent insofar as his disobedience to Court Orders. I don't intend to be headstrong in this matter. I simply intend to see that the Orders of the Superior Court are obeyed, not only by Mr. Cournoyer but by everybody else who is ordered to do anything by this Court. If I don't fulfill that responsibility, and I may say if any Judge of this Court does not fulfill that responsibility, we might as well close the Courthouse doors. See Transcript below at pg. 20.

The Rhode Island Superior Court acted rationally, appropriately and constitutionally in dealing with Mr. Cournoyer's incredible and infinite agenda of contempt. This Court should not now entertain this matter by way of extraordinary review particularly where his appeal is either premature or time-barred according to well established precedent.

Respectfully submitted,

TOWN OF LINCOLN
By James P. Marusak
Town Solicitor

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

SUBSTITUTED FINAL DECREE

This cause came on to be heard on Bill, Answer and Proof, and upon consideration thereof the Court makes the following findings of fact:

(a) The real estate of the Respondent, Joseph A. Cournoyer, is situated partly in a dwelling house district and partly in an agricultural district, as defined by the Zoning Ordinances of the Town of Lincoln.

(b) That the Respondents have placed and are permitting to be placed upon said real estate, for storage thereon, certain trucks, trailers, snow-plows, waste lumber, junk motor vehicles and other items of a junk and waste character.

(c) That the use to which the premises have been put by the Respondents, by themselves and/or *with their permission*, is in violation of the Zoning Ordinances of the Town of Lincoln.

(d) That the use to which said real estate is being put by the Respondents, by themselves and/or *with their permission, is a public nuisance.*

It is therefore

ORDERED, ADJUDGED and DECREED AS FOLLOWS:

That the Respondents are *permanently adjoined* from placing and from *permitting to be placed* upon the real estate owned by the Respondent, Joseph A. Cournoyer, for storage

thereon, trucks, trailers, snow-plows, waste lumber, junk motor vehicles and other items of a junk and waste character.

2. That on or before April 1, 1958 the Respondents are ordered to remove from the said real estate all trucks, trailers, snow-plows, waste lumber, junk motor vehicles and all other items of a junk and waste character.

3. That the Respondents are permanently enjoined from violating the provisions of the Zoning Ordinances of the Town of Lincoln.

Entered as a Decree of this Court this 18th day of February, A. D. 1958.

Assented to:

s/ GERALD A. OSTER
Solicitor for the Complainant

s/ ANGELO DISPIRITO
Solicitor for the Respondent

Enter: s/ FROST, P.J.
2/18/58

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ATTORNEYS FOR PLAINTIFF
Gerald Oster, Harry Asquith

ATTORNEYS FOR DEFENDANT
Alfred Silverstein, John Mutter, Earl Pasbach, Aram Berberian, Angelo DiSpirito

NO.	DATE	ENTRIES
1	8/6/57	Bill of complaint filed, and subpoena with two notices issued returnable September 16, 1957.
2	2/18/58	Frost, J. Final Decree entered.
3	5/1/58	Petition to adjudge respondent in contempt filed.
4	7/6/59	Decree entered adjudging respondent in contempt and body attachment ordered issued.
5	8/19/59	Petition to modify and vacate filed.
6	11/20/59	Weisberger, J. Petition to vacate assigned for hearing to November 23, 1959.
7	11/10/59	Decree entered adjudging respondent in contempt.
8	12/7/59	Murray, J. Order entered releasing respondent from ACI conditionally.
9	12/15/59	Decree entered.

NO.	DATE	ENTRIES
10	12/18/59	Inventory in compliance with decree of 12/15/59 filed.
11	3/21/61	Perkins, J. Order authorizing intervention entered.
12	5/15/61	Petition by intervenor to adjudge respondent in contempt filed, and decree entered (Perkins, J.)
13	5/19/61	Claim of appeal by respondent from decree entered 5/15/61 filed.
14	6/7/61	Inventory filed.
15	6/30/61	Decree entered adjudging respondents in contempt.
16	7/3/61	Decree entered.
17	7/3/61	Claim of appeal filed.
18	7/7/61	Claim of appeal filed.
	9/12/61	Transcript allowed and cause including all papers therein certified to the Clerk of Supreme Court.
19	10/17/62	(SUPREME COURT) Condon, J. Order entered allowing substituted Bill of Complaint.
20	12/24/62	Supreme Court opinion filed respondents appeal is affirmed, decree appealed from is reversed and cause is remanded to Superior Court for further proceedings.
21	4/29/63	Heard on petition for sentencing Decree entered.
22	5/9/63	Claim of appeal filed.
23	1/15/69	Weisberger, J. Order entered assigning motion for sentence to January 29, 1969.
24	2/8/69	Weisberger, J. Decree entered, sentencing deft. to pay fine of $250. and to be committed to ACI for 90 days. Sentence is suspended, conditionally.
	4/30/69	Resp. motion to reopen his case is denied. 1969 May 9. Resp. motion to suspend sentence

NO.	DATE	ENTRIES
		of 2/3/69 is denied. Court orders suspension of sentences removed. Resp. is committed to ACI for 90 days and fine not paid and committed.
	11/8/69	This cause including all papers therein certified and transmitted to Clerk of Supreme Court.
25	7/15/70	Supreme Court opinion filed.
	7/23/70	Giannini J. Respondent appears and oral motion for stay of sentence denied and pursuant to Supreme Court opinion is committed on sentence previously imposed.
26	11/9/70	Weisberger, J. Order entered.
27	1/4/71	Weisberger, J. Decree entered appointing Harry Asquith Special Master.
28	1/4/71	Notice of appeal filed.
	4/8/71	This cause including all papers therein certified and transmitted to the Clerk of Supreme Court.
	1/10/72	Resp. appeal is denied and dismissed by Supreme Court.
29	9/18/72	Weisberger, J. Order entered granting special master fee of $525.00.
30	6/10/72	Opinion of Supreme Court filed.
31	12/14/73	Motion to vacate filed.
32	12/3/73	Petition for instructions filed.
	12/17/73	Weisberger, P.J. Respondent's motion to vacate the final decree of February 18, 1958 is heard and same is denied. Complainant and Special Master's petition for instructions is heard and approved. Order to be entered. L.O.W.
33	12/21/73	Order entered.
34	1/28/74	Weisberger, P.J. Resp. motion for stay is heard and same is denied. L.O.W.

NO.	DATE	ENTRIES
	3/5/74	Weisberger, P.J. Sealed bids as per Court order docketed 12-21-73 are opened in open court and a bid of $1750.00 North Providence Used Auto Parts was accepted. Order to enter. L.O.W.
35	3/5/74	Order entered.
36	5/31/74	Petition for instructions filed.
	6/11/74	Weisberger, P.J. Heard on petition for instructions and order to enter. L.O.W.
37	6/20/74	Order entered authorizing sale.
38	7/3/74	Notice of appeal by defendant from order entered 6-20-74 filed. Copies to attorneys for plaintiff.
39	7/5/74	Order for transcript filed.
40	7/11/74	Weisberger, P.J. Request for stay denied.
41	9/16/74	Roberts, C.J. Order entered enlarging time for filing transcript to October 16, 1974.
	10/12/74	Transcript filed.
	10/15/74	This cause including all papers herein, transcript and exhibits certified to Clerk of Supreme Court.
	10/22/74	Request for stay filed.
	10/22/74	Motion to vacate filed.
42	10/25/74	Entry of appearance filed.
	10/25/74	Weisberger, P.J. Sealed bids as per Court order and a bid of $7500.00 was accepted. Order to enter. Cont. to 10-30-74.
43	10/30/74	Proof of service filed. (4 witness subpoenas)
44	10/30/74	Weisberger, P.J. Order entered.
	3/15/75	Proofs of service filed.
	3/15/75	Weisberger, P.J. Heard on petition for instructions and order to enter. L.O.W.
	4/29/75	Petition for instructions filed.
	4/29/75	Order of notice entered returnable May 15, 1975.

NO.	DATE	ENTRIES
45	5/12/76	Petition for instructions filed.
	5/19/76	Weisberger, P.J. Heard on petition for instructions and Order to sell to be entered. L.O.W.
46	5/19/81	Police summons filed.
47	6/1/76	Notice of appeal filed.
48	6/3/76	Weisberger, P.J. Defendants oral petition for a stay hearing in part & cont. to 6-8-76 for further consideration. L.O.W.
	6/3/76	Weisberger, P.J. Defendants petition for a stay of the order entered on 5-19-76 is heard in part & cont. to 6-8-76.
	6/8/76	Weisberger, P.J. Further heard & cont. to 6-15-76.
49	6/9/76	Weisberger, P.J. Order entered that Harry W. Asquith is appointed Special Master.
50	6/9/76	Weisberger, P.J. Order entered that the Special Master be awarded a fee of $1750.00.
51	6/18/76	Weisberger, P.J. Order entered.
52	6/27/76	Stipulation: Domenic A. Mosca, Jr. withdraws his appearance for defendant, Arthur J. Cournoyer. Arthur J. Cournoyer enters his appearance pro se ipso.
53	4/19/77	Weisberger, P.J. Order entered that the oral pro se motion of the defendant to discharge the Special Master is denied.
		SUPREME COURT
	10/16/74	Papers, transcript and exhibits filed.
	5/4/77	Heard on defendants reasons of appeal. Briefs submitted.
	7/18/77	Opinion filed. The defendants appeal is denied and dismissed.
	7/26/77	Papers, transcripts and exhibits remanded to the Clerk of Superior Court Providence County. s/ BRIAN B. BURNS

NO.	DATE	ENTRIES
	7/26/77	Papers, transcript and exhibits received from Supreme Court. Transcript filed herein. Exhibits filed in Exhibit Room.
54	5/8/80	Petition for instructions filed.
	5/27/80	Giannini, P.J. Heard & cont. to 7-7-80 before Giannini, P.J. Order to enter for signature of the Court.
55	5/27/80	Entry of appearance filed for respondent.
56	5/29/80	Giannini, P.J. Order entered.
57	6/2/80	Letter to Judge Giannini filed.
58	6/3/80	Response to petition for instructions filed.
59	6/3/80	Offer of proof filed.
60	6/3/80	Motion to discharge Special Master filed.
61	7/7/80	Copy of Page 252 of the Town Council Journal Book 9 filed.
	7/7/80	Giannini, P.J. Heard on instruction to enforce decree.
	7/8/80	Further heard.
	7/9/80	Hearing concludes. Defendants motion to modify final decree is denied. Deft. Arthur Cournoyer to be sent to ACI until order of the Court is carried out. Defendant to appear at 10:00 a.m. July 10, 1980 to begin sentence. Exhibits filed herein.
62	7/9/80	Giannini, P.J. Order entered.
63	7/10/80	Notice of appeal to Supreme Court filed. Fee paid. Opposing counsel notified.
	7/10/80	Giannini, P.J. Defendant appears for sentencing. Defendant held without bail at the ACI in violation of Court order. Defendant to remain until order is carried out.
64	7/10/80	Giannini, P.J. Order entered.
	7/15/80	Giannini, P.J. Defendant appears for motion to be released on bail and same is denied.

NO.	DATE	ENTRIES
	7/21/80	Giannini, P.J. Heard on petition of Special Master. Deft. Arthur A. Cournoyer released from ACI on entry of order filed this date.
65	7/21/80	Giannini, P.J. Order entered.
66	8/7/80	Notice of appeal to Supreme Court filed. Attorneys of record notified. Fee paid.
	8/8/80	This cause including all papers herein, no transcript, no exhibits certified to the Clerk of Supreme Court.
		SUPREME COURT
	8/12/80	Papers and exhibits filed.
	9/18/80	Motion to remand. Granted Kelleher, J. 9-19-80.
	9/19/80	Papers and exhibits remanded to Clerk, Superior Court.
67	9/8/80	Creato, J. Order entered: Respondents motion to enlarge time & to have stenographer retire from service is denied on the grounds that this Court lacks subject matter jurisdiction.
	9/24/80	This cause including all papers herein, no transcript and exhibits certified to the Clerk of Supreme Court.
		SUPREME COURT
	9/24/80	Papers refiled.
	10/8/81	Heard on Show Cause Order.
	10/8/81	Order entered. The appeal of the defendant is denied and dismissed.
	10/9/81	Papers, transcripts and exhibits remanded to the Clerk of Superior Court, Providence County. s/ BRIAN B. BURNS
	10/19/81	Papers, transcript and exhibits received from Clerk of Supreme Court. Transcript filed Section 45 #17. Exhibit: filed with case.

NO.	DATE	ENTRIES
	11/12/81	Giannini, P.J. Heard and Special Master to enter order as hearing continued to 11-19-81. DFL
68	11/13/81	Giannini, P.J. Order entered.
	11/19/81	Giannini, P.J. Opening of bids by plaintiff-reserved. Defts. motion for stay is denied. Order to enter. Cont. to later date. Exhibits filed in case.
69	11/20/81	Giannini, P.J. Order entered.
	11/27/81	Giannini, P.J. Hearing commences. Arthur Cournoyer is sworn. Case cont. to 12-14-81.
70	12/14/81	Transcript of hearing filed.
71	12/14/81	Joseph Little enters his appearance for plaintiff.
72	12/14/81	Memorandum filed.
	12/14/81	Giannini, P.J. Hearing commences. Exhibits filed this date. Exhibit 1 (4 bids) opened this date. Cont. to 1-5-82. Exhibits filed in case.
	1/12/82	Giannini, P.J. Court awards bid to Foot Inc. of Wrentham, MA for the sum of $3600 to remove all vehicles from lot. Deft. motion for stay is denied. Order to enter for signature of the Court. Exhibits 5 filed in case.
73	1/15/82	Giannini, P.J. Orders (2) entered.
74	2/2/82	Respondent Arthur J. Cournoyer appeals to the Supreme Court from the Orders of the Superior Court entered on July 9, 1980; July 21, 1980; and Jan. 15, 1982. (Seventy dollars paid to the Clerk of Superior Court) Mailed copy to Joseph T. Little, Esq., Harry Asquith, Esq., Supreme Court.
75	2/11/82	Memorandum report filed.
76	2/11/82	Order for transcript filed.
77	2/16/82	Giannini, P.J.; Order entered: The above motion shall be heard before Mr. Justice Giannini on February 22, 1982.

NO.	DATE	ENTRIES
	2/22/82	Giannini, P.J.; Defendant's motion to correct record is granted. Order to enter.
78	2/24/82	Giannini, P.J.; Order entered.
	2/24/82	This cause including all papers herein, transcript and exhibits certified to the Clerk of Supreme Court.
	6/8/82	Papers transcript and exhibits received from the Clerk of Supreme Court. Case, transcripts, exhibits filed in special drawer.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

SUPERIOR COURT

Equity No. 26210

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ORDER

This matter was heard on June 14, 1990 before Mr. Presiding Justice Anthony A. Giannini pursuant to a status hearing; the Respondent having been sentenced by this Court for civil contempt to serve a term of six (6) months at the Adult Correctional Institutions, said term to be suspended conditionally. Said sentence was imposed on March 1, 1990. The suspension provision was removed for violation of condition by this Court on May 7, 1990, after hearing and Respondent was ordered to commence serving the six-month sentence.

On June 14, 1990 after hearing and receipt of testimony and upon consent of the parties is hereby ordered as follows:

1. That the Respondent is released from the Adult Correctional Institutions pursuant to this order and upon the entry of this order;

2. That Respondent's remaining sentence is in no manner affected by this release, but the total sentence shall remain in full force and effect during the period of this conditional release.

3. That during his release, Respondent shall actively engage in the cleanup of the premises. On or before July 18, 1990, the Respondent shall remove all materials as ordered from his land, so as to bring him into compliance with the

zoning ordinances of the Town of Lincoln and the terms of this Court's orders.

4. That it is the intent of this Court and all parties to this action, including Respondent, that he shall, on or before July 18, 1990, become and forever remain in compliance with said zoning ordinances;

5. That if Respondent is or becomes in violation of said ordinance, the said sentence shall be reactivated in full and the Respondent shall then be returned forthwith to the Adult Correctional Institutions to serve the remainder of said sentence in its entirety, including the imposition of a day to day sanction of incarceration, fines or both, until the Respondent shall become in compliance with said zoning ordinances;

6. Respondent waives knowingly, willingly and voluntarily any claim or right he may arguably have to contest serving the remainder of said sentence. Respondent acknowledges that his term is being interrupted and not vacated or terminated in any manner or form. Respondent further admits that the sentence remains totally and validly in existence until the expiration of the term and until compliance by the Respondent or until modification by the Court;

7. The issues presently pending on appeal shall remain unaffected by the terms of this order;

8. That the Respondent voluntarily waives any right of appeal as to the terms of this order if he is reincarcerated pursuant to the terms of this order;

9. This matter is continued to July 25, 1990 at 10:00 a.m. for status hearing in order for the Town of Lincoln and the Special Master to report to the Court as to what action has

been taken by the Respondent, as to what further action is recommended and for further action by this Court.

By consent on this 14th day of June, 1990.

s/ ARTHUR J. COURNOYER
ARTHUR J. COURNOYER

s/ CHARLES J. ROGERS
CHARLES J. ROGERS,
as Attorney for Arthur J. Cournoyer

s/ JAMES P. MARUSAK
Town of Lincoln by JAMES P. MARUSAK, Town Solicitor

By order (Illegible), Deputy Clerk

Enter GIANNINI, P.J.
June 14, 1990

SUPREME COURT
No. 90-145 — Appeal

TOWN OF LINCOLN

v.

JOSEPH A. COURNOYER, ALIAS; ET AL.

ORDER

This case came before this court for oral argument on November 5, 1990. Both parties had been ordered to show cause why the issues raised by this appeal should not be summarily decided. Defendant is appealing his contempt conviction. The conviction arises out of the defendant's failure to comply with a court decree ordering him to clean up his property. Defendant alleges that the Superior Court judge exceeded his authority in ordering defendant to remove his trailer home and garage from his property, and in enjoining defendant from keeping more than one registered vehicle on the property.

After careful consideration of the arguments and memoranda submitted by the parties, this court finds that cause has not been shown. Accordingly, we summarily decide that the trial judge did not exceed his authority in entering the above order.

Therefore, defendants' appeal is denied and dismissed. The decision of the Superior Court is hereby affirmed.

Entered as an Order of this Court this 16th day of November 1990.

By Order,

s/ ILLEGIBLE

MATTHEW J. SMITH
Clerk

Mr. Chief Justice Fay did not participate.